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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JULIE HALLIBURTON,

Plaintiff and Appellant,

v.

STADIUM PROPERTIES, LLC,

Defendant and Respondent.

B284848

(Los Angeles County  
Super. Ct. No. BC584826)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Gregory W. Alarcon, Judge. Affirmed.

Law Offices of Dale Washington and Dale E. Washington  
for Plaintiff and Appellant.

Yoka & Smith, Peter W. Felchlin and Lauren A. R. Lofton  
for Defendant and Respondent.

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The contents of Julie Halliburton's storage unit were sold in a forced lien sale by Stadium Properties, LLC, doing business as Dollar Self Storage ("Dollar"). She appeals from a jury verdict in favor of Dollar, contending Dollar violated various statutory requirements when it conducted the sale. We affirm.

### **FACTS**

On August 12, 2011, Halliburton rented a storage unit from Dollar to store household items. The rental agreement provided rent was due on the first of the month and "is delinquent on the day immediately following this date." Further, that if "rent is not received by Owner by the tenth day of the due date, if Occupant's check is dishonored and returned, or if Occupant's unit becomes subject to lien enforcement procedures under the Self-Service Storage Facilities Act, Occupant agrees to pay to Owner, as additional rent, administrative charges, and other fees . . . ." The rental agreement then set forth the various fees and charges that would be incurred in the event of delinquency.

It is Dollar's policy to first assess a late fee if the rent is not paid by the 11th day after rent is due. It then assesses a preliminary lien fee on the 32nd day and sends a lien notice to the customer on the 52nd day if the rent remains unpaid. On the 66th day, the lock is cut on the storage unit, which is inventoried, and a red lock is put on in its place. Dollar then advertises the sale of the contents of the storage unit for two consecutive weeks. A lien sale is conducted thereafter, but the customer can bring the account current at any time preceding the sale. In addition, the customer may contest the lien proceedings, in which case the sale is halted and an investigation is conducted.

During her lease, Halliburton was late in making rental payments every month. She was also assessed a preliminary lien fee 11 times.

On July 9, 2014, the contents of Halliburton's storage unit were sold pursuant to a lien sale. Halliburton had failed to pay her rent or bring her account current beginning on March 25, 2014. A preliminary lien notice was mailed to her on April 16, 2014. Halliburton made partial payments on May 5, 2014 and June 15, 2014, but remained in arrears in the amount of \$205.75. Dollar advised her it did not waive any of its rights to continue lien enforcement proceedings until the account was paid in full. Thereafter, Dollar advertised the sale of the contents of Halliburton's storage unit for two weeks, beginning on June 25, 2014. Although Halliburton had objected to prior lien proceedings, she did not do so before the sale in July.

Halliburton sued Dollar, alleging breach of contract, trespass, and conversion. A jury found in favor of Dollar and Halliburton timely appealed.

### **DISCUSSION**

Halliburton contends Dollar's lien enforcement policies run afoul of the California Self-Service Storage Facilities Act (the Act; Bus. & Prof. Code, § 21700 et seq.)<sup>1</sup> in several ways, including imposing a late fee and selling the contents one day earlier than permitted by the Act. Halliburton contends Dollar's failure to comply with the Act renders the sale of the contents in her storage unit invalid. She further contends there were errors in

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise specified.

the jury instructions and the special verdict form.<sup>2</sup> We reject Halliburton's contentions.

### **I. The Self-Service Storage Facilities Act**

The Act regulates the relationship between owners and tenants of storage units at self-service storage facilities. "The purpose of the Act was to provide self-storage facility owners an 'effective remedy against defaulting customers.'" (*Vitug v. Alameda Point Storage, Inc.* (2010) 187 Cal.App.4th 407, 415 (*Vitug*).) To that end, the owner of a self-storage facility acquires a lien on all personal property of the tenant of a storage space under the Act. (§ 21702.) The tenant must execute a rental agreement with the owner that establishes the terms and conditions of occupancy, which must include a statement that the tenant's property will be subject to a lien if rent is not paid within 14 days. (§§ 21701, subd. (d), 21712.)

When rent is delinquent for 14 days, the owner may terminate the right of the tenant to use the storage space by sending a preliminary lien notice to the tenant. (§ 21703.) Under the Act, the owner may deny the tenant access to the space, enter the space, and alert the tenant of a pending lien sale as well as affect the sale after posting an advertisement of the sale for the required two-week period. (§§ 21705–21707.) The Act also authorizes the imposition of late fees if the tenant fails to pay the

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<sup>2</sup> Halliburton also contends in passing that the trial court erred when it declined to bifurcate the trial, rule on issues of law, or direct a verdict. As Halliburton presents no cogent argument supported by facts or the law on these issues, we decline to address them. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived."]); Cal. Rules of Court, rule 8.204(a)(1)(B).)

entire amount of the rental fee specified in the rental agreement. (§ 21713.5, subd. (a).)

The First District conducted a detailed analysis of the Act in *Vitug, supra*, 187 Cal.App.4th at page 407, which we find instructive. There, the renter of a storage unit fell behind on her rent payments and received a notice of lien sale indicating she had to pay a certain amount of money by a certain date. The renter subsequently paid the owner more than the amount specified in the notice, but the owner took the position the renter's payment was insufficient because additional rent and late fees had accrued following the issuance of the notice. (*Id.* at p. 409.) The renter sued, alleging the owner violated the Act by continuing to charge rent and late fees after terminating her right to use her storage unit in a notice of lien sale. (*Ibid.*)

The court considered the terms of the Act and the Legislature's intent, and concluded, "the Legislature intended to provide owners with liens, establish fair procedures to enforce the liens, and determine the *amount* of reasonable late fees. This is apparent from the fact that the Act addresses those matters directly and in detail but does not expressly address when rent and late fees may be charged. In particular, no provision of the Act addresses whether owners may charge rent after the mailing of the notice of lien sale. The Act authorizes late fees and provides that there should be only one late fee for each late rent payment, but the Act defers to the rental agreement for determination of when the rent and associated late fee becomes due. (§ 21713.5, subd. (a)(3) ['Only one late payment fee shall be assessed for each rental fee payment that is not paid on the date specified in the rental agreement.'].) And the Act defers to the underlying rental agreement in determining the amount of rent

and late fees encompassed by a lien: to wit, section 21702 provides that owners have a lien for all charges ‘present or future, *incurred pursuant to the rental agreement.*’ (Italics added.)” (*Vitug, supra*, 187 Cal.App.4th at pp. 414–415.)

## **II. Dollar’s Policies Complied with the Act**

Halliburton contends the timing of the lien enforcement proceedings violated the terms of the Act, Dollar assessed multiple late fees in violation of the Act’s requirement that only one late fee be charged, and Dollar improperly locked her out of her unit. She further contends Dollar inflated the amounts she owed when it improperly increased the rent and forced her to accept its insurance. We address each of these issues in turn and conclude Dollar complied with the Act.

In reaching our conclusion, we decline to credit the many unlawful detainer cases relied upon by Halliburton throughout her brief. The Act’s extrajudicial remedy of a lien sale is distinct from the remedies afforded in an unlawful detainer action. (*Nist v. Hall* (2018) 24 Cal.App.5th 40, 44, citing Friedman et al., Cal. Practice Guide (2018) Landlord-Tenant, ¶ 7:79.1, pp. 7-30 to 7-31.) Indeed, a landlord may exercise his rights by either effecting an unlawful detainer action or a lien sale. (*Ibid.*) Dollar chose the remedy of a lien sale under the Act. While it is therefore bound by the requirements of the Act, it is not bound by the procedures and requirements in unlawful detainer actions.

### **A. Standard of Review**

In determining whether Dollar’s policies violate the Act, “we apply well-established rules of statutory construction. The goal of statutory construction is to ascertain and effectuate the intent of the Legislature. [Citation.] Often, the words of the statute provide the most reliable indication of legislative intent.

[Citation.] However, when the statutory language is itself ambiguous, we must examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes. [Citation.] ‘ “When the language is susceptible of more than one reasonable interpretation . . . we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.” ’ [Citation.]” (*Rothschild v. Tyco Internat. (US), Inc.* (2000) 83 Cal.App.4th 488, 496.) The meaning and construction of a statute is a question of law and is examined de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

**B. The Timing of Late Fees Did Not Violate the Act**

Dollar charged late fees on the 11th day after the rent was due. According to Halliburton, this violated the Act because late fees could only be charged on the 12th day after rent was due. Halliburton relies on section 21713.5, subdivision (a)(1), which specifies, “[n]o late payment fee shall be assessed unless the rental fee remains unpaid for at least 10 days after the date specified in the rental agreement for payment of the rental fee.” Halliburton reads this provision to mean a late fee may not be imposed until the 12th day of unpaid rent rather than the 11th day because the date the rent is due does not count as a part of the 10 days. (Civ. Code, § 10 [“The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.”].) We disagree with Halliburton’s reading of the Act.

The plain language of the statute permits a late fee to be assessed if rent remains unpaid “at least 10 days after” the date rent is due under the rental agreement. Even if we exclude the first day, as required under Civil Code section 10, the 11th day is “at least 10 days after” the date rent is due. We see no reason to read an additional day into the statute.<sup>3</sup>

### **C. The Fees Did Not Violate the Act**

Halliburton also misinterprets the Act’s provision that “[o]nly one late payment fee shall be assessed for each rental fee payment that is not paid” (§ 21713.5, subd. (a)(3)) to mean that Dollar may not impose any other fees. Specifically, Halliburton contends section 21713.5, subdivision (a), prohibits Dollar from imposing a pre-lien fee of \$15 if rent is not paid within 14 days of the due date and a lien status service charge of \$25 if rent is not paid within 29 days of the due date. According to Halliburton, these fees were charged solely because of the passage of time and were late fees in disguise. The record and the law hold otherwise.

It is true that the Act permits one late payment fee “for each rental fee payment that is not paid on the date specified in the rental agreement.” (§ 21713.5, subd. (a)(3).) But the Act further contemplates “late payment fees, or other charges, present or future, incurred pursuant to the rental agreement and for expenses necessary for the preservation, sale, or disposition of

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<sup>3</sup> In her reply brief, Halliburton argues that Dollar “assesses” the late fee by midnight of the 10th day and “accounts” for it on the 11th day, at 1:00 a.m. or 2:00 a.m. in violation of the Act. As Halliburton did not raise this issue in her opening brief and Dollar did not address it in its respondent’s brief, we decline to entertain it in this opinion. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1296.)

personal property subject to the provisions of this chapter.”  
(§ 21702.)

Contrary to Halliburton’s mischaracterization, the pre-lien fee and the lien status service charge are not late fees in disguise. Dollar presented testimony that every fee charged after the initial late fee represented additional work resulting from the lien sale proceedings, including fees for preservation and sale of the unit. Because the fees were validly imposed, there is no merit to Halliburton’s contention that the amounts Dollar provided in its lien notices were overstated.

#### **D. The Lock Out Procedure Was Not Illegal Self-Help**

Halliburton also asserts Dollar improperly denied her access to her storage unit without first complying with the procedural protections of the Act. According to Halliburton, Dollar invalidated her gate access code and over locked her unit every time she had not paid by the 10th day but failed to perfect a preliminary lien notice or a notice of lien sale. Relying on early cases involving unlawful detainer, Halliburton asserts Dollar utilized illegal self-help in doing so. (*Jordan v. Talbot* (1961) 55 Cal.2d 597, 605 [residential tenant in forcible entry and detainer action]; *Kassan v. Stout* (1973) 9 Cal.3d 39 [commercial tenant in a forcible entry and detainer action].) As we have discussed above, unlawful detainer actions do not apply here and her contention thus fails.

Moreover, the record discloses a preliminary lien notice was sent on April 16, 2014, and a notice of lien sale was sent on May 8, 2014. The preliminary lien notice advised that if the total amount due was not paid in full before May 2, Halliburton’s “right to the storage space will terminate.” This is supported by testimony from Dollar’s vice president of operations that access

was “restricted,” but not terminated, if there remained a balance on the account after the 10th day. Contrary to Halliburton’s contention, Dollar complied with its obligation under the Act. (§ 21703.)

**E. The Changes in the Rental Terms Did Not Violate the Act**

Next, Halliburton challenges the changes Dollar made to the rental agreement during her tenancy, claiming they were not properly noticed and did not allow her the option to terminate the lease. Halliburton takes issue with a rent increase from \$209 to \$219 and a change in the due date for rent. She claims the resulting increases in her rent resulted in overstated demands to keep her account current. She also contends she was forced to accept Dollar’s insurance, which also resulted in an overcharge.<sup>4</sup>

Halliburton’s argument that these changes were required to be personally served on her pursuant to Civil Code section 827, subdivision (a), is not persuasive. The rental agreement specifies that changes in rent may be made in writing and mailed. Halliburton presents no legal authority for the proposition that the requirements of Civil Code section 827 may not be waived by the parties.

Halliburton also claims that the changes to the rental agreement and the addition of insurance were invalid because she had no choice to terminate her lease in response to the changes. (Civ. Code, § 827.) According to Halliburton, the rent

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<sup>4</sup> When she initially signed the rental agreement, Halliburton declined Dollar’s protection plan; she was later added to the plan because the rental agreement required tenants to either maintain separate insurance or enroll in Dollar’s protection plan.

increased while she was locked out, and the insurance charged to her account occurred “about 1 year into the tenancy,” presumably also when she was locked out. She does not claim, however, that she was unable to terminate her lease and move her belongings to another storage facility after these new policies went into effect. Indeed, she could have done so during the times when she was not locked out, infrequent as they may have been. For example, it is undisputed she was not locked out at the beginning of March 2014, when she had a credit balance; she could have terminated her lease then. In any event, Halliburton always had the option to bring her account current and terminate the lease after the new terms were imposed, even in June 2014, when Dollar changed the due date for rental payments and was in the middle of lien proceedings.

Last, Halliburton’s complaint that the charges for Dollar’s insurance or protection plan were “confiscated” and owed back to her as a matter of law are meritless. To the extent Halliburton implies the addition of the protection plan to her rent was somehow illegal, we reject this argument, as did the California Supreme Court in *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749 (self storage facility’s automatic enrollment of its tenant in its insurance plan did not violate the Insurance Code).

#### **F. The Sale Was Not Premature**

Halliburton further contends the lien sale was conducted one day early because the Act requires advertising to run for two consecutive weeks, after which the property may be sold. (§ 21707.) Again, Halliburton misreads the statute.

Section 21707 specifies that the sale of a storage unit must be advertised “once a week for two weeks consecutively.” It does not specify the timing of a sale, much less that it must occur at

least one day after the advertisement period ends. It is undisputed the advertisements ran once a week for two consecutive weeks, complying with section 21707. The sale was conducted on the last day the advertisement ran, July 9, 2014. Halliburton has presented no legal support for the proposition that the sale had to occur, at the earliest, on July 10, 2014.

### **III. The Jury Instructions Were Not Erroneous**

Halliburton also asserts the trial court misinstructed the jury that the Act defers to the rental agreement on the imposition of rent and late fees. She is wrong.

#### **A. Standard of Review**

We independently review a claim of instructional error. (*Uriell v. Regents of University of California* (2015) 234 Cal.App.4th 735, 742–743.) A party is entitled to request that the jury be correctly instructed on any of the party’s theories of the case that are supported by substantial evidence. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572 (*Soule*).) A jury instruction should be an accurate statement of the law; as brief and concise as possible; understandable to the average juror; and neutral, unbiased and free of argument. (See *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 526–527.) Appellate court opinions may be a source for jury instructions. (*Suman v. Superior Court* (1995) 39 Cal.App.4th 1309, 1321–1322.)

#### **B. The Contested Jury Instructions**

At trial, Dollar requested, and the trial court gave, the following special jury instructions, to which Halliburton objected.

Instruction No. 9: “The Act authorizes late fees and provides that there should be only one late

fee for each late rent payment, but the Act defers to the rental agreement for determination of when the rent and associated late fee becomes due. The Act defers to the underlying rental agreement in determining the amount of rent and late fees encompassed by a lien. Owners have a lien for all charges present or future, incurred pursuant to the rental agreement.”

Instruction No. 10: “The purpose of the Act was to provide self-storage facility owners an effective remedy against defaulting customers. The lien and lien sale provisions help owners (1) recover the storage facility; (2) collect the rent and other contractual charges owed; and (3) sell or otherwise dispose of any personal property remaining after termination.”

Instruction No. 12: “The Act does not have any provisions limiting when rent may be charged to renters and defers to the rental agreement regarding the imposition of rent and late fees.”

Instruction No. 14: “The Act does not prohibit the charging of rent and late fees after termination of a renter’s access to his or her unit; the Act defers to the underlying rental agreement for determination of what charges are proper and may be included in the lien.”

Instruction No. 15: “A tenant must pay the total sum due to avoid the enforcement of the lien.”

**C. The Contested Instructions Were Correct  
Statements of the Law and Relevant to the Parties’  
Theories at Trial**

Halliburton contends these instructions misled the jury to believe that the Act always deferred to the rental agreement. Not so. The contested instructions were correct statements of law under *Vitug, supra*, 187 Cal.App.4th 407, and were supported by substantial evidence.

Halliburton contends the instructions misstate the law because *Vitug* is limited solely to the question of whether late fees and rent may be charged after access to a storage unit has been terminated. Thus, she claims, its holding is irrelevant to whether the Act defers to the terms of the rental agreement in general. We disagree.

In addressing the issue presented to it, *Vitug* made observations about the Act, including that, “in enacting the Act, and section 21713.5 in particular, the Legislature did not intend to regulate the circumstances under which rent and late fees could be charged. Instead, the Legislature intended to provide owners with liens, establish fair procedures to enforce the liens, and determine the *amount* of reasonable late fees. This is apparent from the fact that the Act addresses those matters directly and in detail but does not expressly address when rent and late fees may be charged.” (*Vitug, supra*, 187 Cal.App.4th at p. 414.) *Vitug*’s holding is thus not limited to when a renter’s

rights to her storage unit have been terminated. The instructions were accurate statements of the law.

Moreover, the instructions were pertinent to the parties' case. Halliburton acknowledges her theory at trial was that Dollar disposed of her property without following the requirements of the Act. In particular, she argued that late fees were imposed in violation of the Act and that the right to deny access to her storage unit was limited under the Act. Thus, the instructions describing the scope of the Act and its relationship to the rental contract were relevant to the issues presented to the jury.

In any event, in reviewing Halliburton's claims of instructional error, "we must not only determine whether the trial court committed error, but whether the error resulted in a 'miscarriage of justice.'" (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1094; accord, *Soule, supra*, 8 Cal.4th at pp. 573–574.) Here, Halliburton argues the instructions "confused the jury that the legislative intent only favored the landlord, and 3 different times stated the [Act] 'deferred' to the rental agreement when the law is exactly the opposite for what was at-issue in this case." This is just another way to say that the jury instructions were not correct statements of the law. We have concluded otherwise and Halliburton has failed to demonstrate a miscarriage of justice.

#### **IV. The Verdict Form Did Not Mislead the Jury**

Finally, Halliburton challenges the first question in the special verdict form, which asks: "Did Plaintiff have a right to possess the subject unit and property therein at the time of the subject lien sale auction?" Halliburton contends the use of the term "subject unit" misdirected the jury to believe the dispute

embodied the storage unit and property rather than just its contents. At trial, Halliburton proffered the following question for the special verdict form, which the trial court declined to include: “Did Julie Halliburton own/have a right to possess the property in Stadium Properties’ storage locker?”

“We analyze the special verdict form de novo.” (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 325; see *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 678.) “The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law.” (Code Civ. Proc., § 624.) A defective special verdict form is subject to harmless error analysis. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1244.)

We find the verdict form was not confusing and did not misstate the law. Here, Halliburton rented a storage unit from Dollar; the storage unit is the basis for the rental agreement and the Act. It would mislead the jury to exclude any reference to the storage unit because the dispute involved Dollar’s remedies for nonpayment of rent for the storage unit. Therefore, the question in the verdict form properly set forth the conclusion of fact, whether Halliburton had a right to possess the storage unit and its contents, as required under section 624 of the Code of Civil Procedure.

**DISPOSITION**

The judgment is affirmed. Dollar to recover its costs on appeal.

BIGELOW, P. J.

We concur:

GRIMES, J.

STRATTON, J.